

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>SHARON R. MITCHELL, ET AL.,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	<b>CIVIL ACTION</b>
<b>v.</b>	:	
	:	<b>NO. 99-6306</b>
<b>CITY OF PHILADELPHIA, ET AL.,</b>	:	
	:	
<b>Defendants.</b>	:	

**MEMORANDUM AND ORDER**

**Tucker, J.**

**March \_\_, 2007**

Presently before this Court is Plaintiffs' Motion for Reconsideration and/or for a New Trial, and/or for Relief from Judgment, (Doc. 93). For the reasons set forth below, upon consideration of Plaintiffs' Motion, Defendants' Response (Doc. 94), and Plaintiffs' Reply (Doc. 95), this Court will grant in part and deny in part Plaintiffs' Motion.

**BACKGROUND**

Plaintiff, Sharon Mitchell, and Plaintiff class members (collectively, the "nonmembers") are or were at some time, employees of the City of Philadelphia ("City"). The nonmembers are represented, for purposes of collective bargaining, by District Council 33, American Federation of State, County, and Municipal Employees, and AFL-CIO (hereinafter "District Council 33"). In 1989, the City and District Council 33 agreed to deduct fair share fees from the members of the bargaining unit who decided not to join the union. The current and preceding City/District Council 33 collective bargaining agreements have provided for mandatory deductions from the

wages of non-union employees. All nonmembers employed by the City in the District Council 33 bargaining unit pay a uniform agency fee, regardless of the local that receives a portion of their fees. The agreement also indemnifies the City for any losses it may suffer from the improper deduction of fair share fees. District Council 33 has relied on a single individual, Vernon Person, to compute and prepare the annual notices regarding the fair share agreements payable by the nonmembers in the City's bargaining unit.

On an annual basis between 1990 and December 1997, notices were distributed to the nonmembers. In September 1998, Mr. Person was unable to fulfill his normal duties in preparing the annual notice. However, in September 2000, Mr. Person resumed working. At that juncture, the nonmembers had not been provided with annual notices for the intervening two years; however, fees were still deducted from the nonmembers' wages during that time. The notice, provided to the nonmembers on or after September 20, 2000, did not contain separate audits for each of the local units affiliated with District Council 33.<sup>1</sup>

On January 5, 2001, District Council 33 forwarded a new notice, dated December 29, 2000, to the nonmembers. The notice did not contain separate audits for each of the local unions; instead, it was an audit of consolidated local expenses. **Plaintiffs contend** that during the twenty months from January 1, 1999 until September 20, 2000, Defendants failed to provide advance notice to the nonmembers for the collection of agency fees in violation of the constitutional

---

<sup>1</sup> District Council 33 is affiliated with fourteen (14) constituent locals, ten (10) of which represent different segments of City employees. The agency fees collected from the nonmembers by the City are forwarded to District Council 33, which sends a portion of the collected union dues and agency fees to each local. The September 2000 notice represented an aggregate of the expenses for all the locals and delineated chargeable and non-chargeable costs.

requirements defined in Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292 (1986).<sup>2</sup>

Plaintiffs also allege that the indemnification clauses in the collective bargaining agreements between the City and District Council 33 were void as against public policy. (Pls.’ Second Amend. Compl. ¶ 51.) Further, Plaintiffs allege that since December 1997, “Defendants have seized agency fees in amounts which exceed that permitted by the First and Fourteenth Amendments to the United States Constitution, because portions of the total fee [deducted from the nonmembers] are used for union activities. . . .” (Pls.’ Second Amend. Compl. ¶ 1.)<sup>3</sup>

### **PROCEDURAL HISTORY**

In the Court’s Memorandum and Order (Doc. 62), filed on October 13, 2004, the Court reviewed Plaintiffs’ Renewed Motion for Summary Judgment (Doc. 52) and Defendants’ Cross-Motion for Summary Judgment (Doc. 54). In their Renewed Motion, Plaintiffs contended that Defendants, District Council 33 and the City, and its various affiliates, have been impermissibly collecting agency fees from the wages of the nonmembers because they failed to provide advance notice. In their Cross-Motion, Defendants argued that Plaintiffs suffered no real harm from the delay in sending notices and thus, were not entitled to relief. Furthermore, Defendants asserted that they were entitled to summary judgment on the issues of 1) the validity of the indemnification clause and 2) notice requirements. The Court granted in part and denied in part Plaintiffs’ Renewed Motion for Summary Judgment. The Court found that District Council 33

---

<sup>2</sup> The Supreme Court has ruled that unions must adopt constitutional safeguards in order to ensure that non-union members are only charged with fair-share fees related to collective bargaining. The procedural safeguards require: (i) advance notice of the basis for the fee; (ii) a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision-maker, and (iii) an escrow of any amount of the fee “reasonably in dispute.” Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292, 310 (1986).

<sup>3</sup> The Court refers to this claim as the “chargeability” issue.

failed to comply with the constitutional requirements of Hudson when it failed to provide *advance* notice to the nonmembers before deducting agency fees from the nonmembers' wages. Hudson, 475 U.S. 292; see also Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977). Although the late notices were substantively adequate, they did not cure the constitutional violation.

The Court next addressed the Plaintiffs' contention that the indemnification clauses in the collective bargaining agreements between District Council 33 and the City are void as against public policy. Specifically, Plaintiffs claimed that such an indemnification clause encouraged the City to ignore its constitutional obligations. The Court found that the indemnification clauses were not void as against public policy. Consequently, the Court denied summary judgment on this issue and stayed the issue of damages until oral arguments were held on October 28, 2004. In the Court's subsequent Order (Doc. 66), the Court granted Plaintiffs \$3,774.00 in nominal damages, denied Plaintiffs' request for full restitution, and withheld Plaintiffs' request for the refund of the non-chargeable portion of the fair share fee until the completion of discovery, which was completed on July 29, 2005.<sup>4</sup> An unsuccessful settlement conference was held before Magistrate Judge Linda K. Caracappa on April 10, 2006. A bench trial for this case began on Monday, April 17, 2006 and recessed at the close of Plaintiffs' evidence.

At trial, Defendants made an oral Motion to enter judgment as a matter of law against Plaintiffs in accordance with FED. R. CIV. P. 52(c) for Judgment on Partial Findings (Doc. 88). Specifically, Defendants argued that Plaintiffs had not shown that they were entitled to damages, other than the nominal damages previously awarded by the Court, for Defendants' failure to

---

<sup>4</sup> In its Order dated April 27, 2005 (Doc. 68, filed Apr. 27, 2005), the Court extended the deadline to complete discovery from May 16, 2005 to July 29, 2005.

provide advance notices.<sup>5</sup>

In the Court's Memorandum and Order (Doc. 91), filed on July 14, 2006, the Court granted Defendants' Rule 52(c) Motion and ordered the Clerk of Court to mark this case as closed. Plaintiffs now move for reconsideration, or in the alternative for a new trial, or in the alternative for relief from judgment, arguing that this Court's entry of judgment ignores elements of the nonmembers' Second Amended Complaint and "fails adequately to consider the impact of the Third Circuit's decision in Hohe v. Casey, 956 F. 2d 399 (3d Cir. 1992)."

### **LEGAL STANDARD**

The Third Circuit has held that the "purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied, 476 U.S. 1171 (1986). Therefore, a motion for reconsideration will be granted if the moving party can demonstrate one of the following: 1) an intervening change in the controlling law; 2) the availability of new evidence that was not available previously; or 3) the need to correct a clear error of law or fact to prevent manifest injustice. Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (citing N. River Ins. Co. v. CIGNA Reins. Co., 52 F.3d 1194, 1218 (3d Cir. 1995)). However, motions for reconsideration should be granted sparingly "because courts have a strong interest in the finality of judgments." Douris v. Schweiker, 229 F. Supp. 2d 391, 408 (E.D. Pa. 2002) (quoting Cont'l Casualty Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995)).

---

<sup>5</sup> In Defendants' Memorandum in Support of its Rule 52(c) Motion (Doc. 88), Defendants also addressed the issue of whether an organizing expense charge of approximately \$50,000.00, which was a line item on one of the September 20, 2000 notices provided to the nonmembers, could be considered chargeable under the law. Defendants stated, however, that "[b]ecause of the posture of [the Rule 52(c) Motion], District Council 33 has had no opportunity to present facts supporting the inclusion of that line item as a chargeable expense." (Defs.' Mem. at 3.)

The Supreme Court has held that a finding of clear error requires a “definite and firm conviction that a mistake has been committed.” Easley v. Cromartie, 532 U.S. 234, 242 (2001) (citing United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948)). To show clear error or manifest injustice, the moving party “must base its motion on arguments that were previously raised but were overlooked by the Court.” United States v. Jasin, 292 F. Supp. 2d 670, 676 (E.D. Pa. 2003). However, “parties are not free to relitigate issues that the Court has already decided.” Id. (citing Smith v. City of Chester, 155 F.R.D. 95, 97 (E.D. Pa. 1994)). See also Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993); Rottmund v. Cont’l Assurance Co., 813 F. Supp. 1104, 1107 (E.D. Pa. 1992). “A motion for reconsideration is not a proper vehicle to merely attempt to convince the court to rethink a decision it has already made.” Colon v. Colonial Intermediate Unit 20, 443 F. Supp. 2d 659, 667 (M.D. Pa. 2006) (citing Glendon Energy, 836 F. Supp. at 1122). “Motions for reconsideration . . . should not be used to put forward additional arguments which the movant could have made but neglected to make before judgment.” Jasin, 292 F. Supp. 2d at 676 (quoting Reich v. Compton, 834 F. Supp. 753-55 (E.D. Pa. 1993)).

## **DISCUSSION**

The Court’s Memorandum and Order filed on July 14, 2006 states that “this case initiated with Plaintiffs asserting a claim against Defendants for lack of advance notice before deducting agency fees from the nonmembers’ wages in violation of Hudson.” With this as its guidepost, the Court found that Plaintiffs’ objections to the fee sharing portion of the agency fees were to be reviewed in relation to the issue of actual damages resulting from Defendants’ alleged failure to

provide proper notice. This was in error. As the Court has detailed above, Plaintiffs here bring two distinct claims: one related to inadequate notice and one related to chargeability.<sup>6</sup> Only the issue of damages related to the notice violations was addressed and ruled upon by the Court. The July 14, 2006 Memorandum and Order, therefore, only applies to the notice claims of this case. Thus, the issue of chargeability remains.

Here, Plaintiffs are not asking the Court to relitigate an issue that the Court has already decided. Indeed, finding that Plaintiffs failed to present sufficient evidence to establish that they suffered actual damages with regard to the notice issue, the Court stated in the Memorandum and Order that it did not “reach the merits of the second issue regarding whether Defendants’ deductions are properly charged to the nonmember Plaintiffs.” As stated above, the Court collapsed the issue related to improper advance notice with the issue of whether Defendants seized agency fees in amounts that exceed that permitted by law.<sup>7</sup> As gleaned in Hohe, however, a finding that plaintiffs are only entitled to nominal damages for a union’s Hudson violation does not foreclose plaintiffs from challenging the accuracy of the agency fees and to seek separate damages in the form of a rebate for improperly collected fees. Hohe, 956 F.2d at 416.

Thus, Plaintiffs’ Motion for Reconsideration on the issue of chargeability must be granted. The Memorandum and Order filed on July 14, 2006 shall be amended to reflect that the chargeability issue presented by Plaintiffs in the Second Amended Complaint is an outstanding

---

<sup>6</sup> Plaintiffs’ claim regarding voidability of the indemnification clauses was decided by the Court in its Order filed on October 13, 2004.

<sup>7</sup> As Plaintiffs have stated, part of the confusion in these proceedings lies in the fact that had the Court awarded Plaintiffs full restitution of agency fees on their notice claim, the issue of chargeability damages, if any, would have been moot.

claim.

With respect to the the advance notice claim, Plaintiffs failed to establish with specificity that they suffered actual damages, or that they are entitled to any damages other than the nominal damages awarded by the Court in its Order filed on March 18, 2005 (Doc. 66), when Defendants failed to provide advance notice to the nonmembers for the collection of agency fees as required under Hudson. Accordingly, the July 14, 2006 Order granting partial judgment pursuant to FED. R. CIV. P. 52(c) for Defendants and against Plaintiffs on Plaintiffs' notice claim shall remain.

Trial will resume on the issue of chargeability only.<sup>8</sup>

---

<sup>8</sup> With regard to the burden of proof on the chargeability issue, the Court will apply the burden of proof structure outlined in Air Line Pilots Assoc. v. Miller, 523 U.S. 866 (1998) ("We have held that the nonunion employee [challenging an agency fee] has the burden of raising an objection, but the union retains the burden of proof.").

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>SHARON R. MITCHELL, ET AL.,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	<b>CIVIL ACTION</b>
<b>v.</b>	:	
	:	<b>NO. 99-6306</b>
<b>CITY OF PHILADELPHIA, ET AL.,</b>	:	
	:	
<b>Defendants.</b>	:	

**ORDER**

**AND NOW**, this \_\_\_\_ day of March 2007, **ITS IS HEREBY ORDERED and DECREED** that Plaintiffs' Motion for Leave to File Reply to Opposition to Motion for Reconsideration (Doc. 95) is **GRANTED**.

Further, upon consideration of the Plaintiffs' Motion for Reconsideration and/or for a New Trial, and/or for Relief from Judgment (Doc. 93), Defendants' Response (Doc. 94), and Plaintiffs' Reply (Doc. 95), **IT IS HEREBY ORDERED and DECREED** that the Motion is **GRANTED** in part and **DENIED** in part as follows:

1. The Memorandum and Order filed on July 14, 2006 shall be amended to reflect that the chargeability issue presented by Plaintiffs in the Second Amended Complaint (Doc. 49) is an outstanding claim.
2. The Clerk of Court shall reopen this case.

It is further **ORDERED** that a status conference will be held before the Honorable Petrese B. Tucker in room 9613 United States Courthouse, 601 Market Street, Philadelphia, PA,

19106, on **Monday, April 16, 2007**, at **2:00 p.m.**

**BY THE COURT:**

---

**Hon. Petrese B. Tucker, U.S.D.J.**